STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
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DECISION OF THE BOARD

Mailed and Filed: JANUARY 06, 2023

IN THE MATTER OF:
Appeal Board No. 625980

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective June 3, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed October 3, 2022 (), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by the employer hospital for three years. She was hired to be a clerical services associate, and in May 2021, she took on the new role of Administrative Support Supervisor. The claimant's supervisor in the new position was JP, a manager.

On February 2, 2022, JP met with the claimant and placed her on a Performance Improvement Plan (PIP). The written plan, signed by the claimant, indicated that the period of the PIP would be 30 days, and if performance did not improve, or worsened, or if agreed upon achievements were not met, further

disciplinary action would result, up to and including termination of employment. The PIP was written with the assistance of the employer's human resources department, referred to by the employer as its Employee Labor Relations (ELR) department. At the 30-day mark, the claimant's PIP was extended by another 30 days, and was thereafter extended again for various reasons, including that the claimant and JP had both been out of the office for an extended period, and to give the claimant additional time to improve her performance.

Beginning in February 2022, the claimant and JP met about weekly to discuss her performance progress. Occasionally during these meetings, JP would reiterate that inability to achieve the goals of the PIP could lead to the claimant's termination from employment. It was standard procedure for the claimant's supervisor to reiterate this in PIP discussions with employees, so that the employee would know what was at stake, and be aware of the consequences of not improving their performance.

On May 18, 2022, JP and JP's supervisor (KT) met with the claimant to discuss her performance, and the employer's dissatisfaction with the progress the claimant was making in connection with her PIP. The purpose of the meeting was to go over the details of the claimant's PIP, to get direct feedback from the claimant, and to find out from the claimant if there was anything else the employer could do to help her succeed at her job. At the end of the meeting, JP and KT told the claimant that they would be reaching out to the ELR department for further guidance on the next steps to take.

After the meeting, the claimant called the employer's ELR, and was told that she should write an impact statement describing her work and situation as soon as possible, and submit it to the ELR. The claimant asked the woman at ELR if she was going to be fired; the woman responded that she did not know, and that the matter would be discussed with JP and KT. The claimant decided not to submit an impact statement as suggested by the ELR department, because she did not think it would help. The claimant was of the opinion that the employer was going to fire her.

At no point had the employer told the claimant she was going to be fired. As of May 18, 2022, JP and KT did not have plans to terminate the claimant's employment, but did intend to reach out to the ELR department to determine what the next steps would be, since ELR was involved in discussions regarding how such matters progressed, and to see if there was anything the leadership

team could be doing differently to assist the claimant in doing her job and reaching her performance goals.

On May 19, 2022, the claimant submitted a written letter of resignation to JP, stating that her last day would be June 3, 2022. The claimant resigned because she believed the employer was going to fire her, and did not want any future employer to see a discharge on her employment record. The claimant last worked on June 3, 2022; had the claimant not resigned, she could have continued working for the employer.

OPINION: The credible evidence establishes that the claimant quit her job because she thought she was going to be discharged, and did not want a discharge on her employment record. However, the evidence fails to establish that the claimant was about to be fired, that her discharge was imminent and unavoidable, or that any decision had been made about her continued employment as of the time the claimant submitted her resignation.

We credit the testimony of the employer's witnesses that the claimant was not told to contact the employer's human resources department at the end of their May 18, 2022 meeting. However, even if the

claimant had been given this instruction, that fact is not dispositive on the issue before us. What is noteworthy

is that the claimant called the ELR, and was told to submit an impact statement explaining her side of what was going on, and that the claimant did not do so, choosing to resign instead.

Also significant is the undisputed evidence that the employer had not told the claimant she was going to be fired, and had not made a decision to fire the claimant, but was still working with its human resources department to determine what to do next. The claimant testified that she believed and was of the opinion that she was going to be fired, making this assumption because the employer had placed her on a performance improvement plan, was not satisfied with her performance, and had told her that if her performance did not improve, she could be fired. However, the claimant's unsupported assumption regarding what the employer's next step was going to be, did not provide her with good cause to quit continuing employment. The conclusion that the claimant's discharge was not imminent or unavoidable is supported by the fact that she was permitted to continue to work after she submitted her

resignation, and until her chosen last day.

We do not concur that the claimant's voluntary separation was with good cause because she reasonably believed she was going to be fired. The Board has held that "although the claimant's belief that she would have eventually been discharged may have been reasonable under the circumstances, it was by no means a certainty that her discharge was forthcoming at the time she resigned. Significantly, the claimant was not told by the employer that she was being discharged or that her discharge was imminent . . ." See, Appeal Board No. 552897. The Board also held in that decision that the claimant's decision to quit rather than have a discharge on her employment record, was a personal reason and did not provide her with a compelling reason to leave her job. See also, Appeal Board No. 586945, in which the Board found that a claimant's voluntary quit to preserve her employment record is a quit without good cause.

Since the evidence fails to establish that the claimant's discharge was inevitable, imminent, or unavoidable, the claimant's resignation because she believed she was going to be fired was a quit in anticipation of discharge, and was without good cause for unemployment insurance purposes. Accordingly, we conclude that the claimant was separated from employment under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective June 3, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER